LEE WAH BANK LIMITED v. NATIONAL UNION OF BANK EMPLOYEES

[O.C.J. (Hashim Yeop A. Sani J.) October 13 & 31, 1980]
[Kuala Lumpur — Originating Motion No. A 15 of 1980]

Industrial Law — Award of Industrial Court — Award confirming dismissal but directing benefits due to be paid to employee — Whether Award made without jurisdiction — Interpretation Act, 1967, s. 40(1) — Industrial Relations Act, 1967, s. 30.

Interpretation — Statutory interpretation — Powers — Powers reasonably necessary — Industrial Relations Act, 1967, s. 30 — Interpretation Act, 1967, s. 40(1).

Administrative Law — Certiorari — Award of Industrial Court — Award made without jurisdiction — Industrial Relations Act, 1967, s. 30.

In this case the Industrial Court after hearing an application by a bank employee made an award as follows:

> "The Court now awards that the dismissal by the Bank do stand. However in view of his long service with the Bank and the fact that the complaints in question were not of a criminal nature, the Court directs that any benefits due under the relevant collective agreements or agreement up till the date of dismissal shall be paid over to him."

In this application the applicant applied for an order of certiorari to quash that part of the decision directing payment of the benefits.

Held: the direction contained in the impugned part of the award referred to in the application was made in excess of jurisdiction and must be quashed.

Cases referred to:-

(1) *Nelson* v. *B.B.C. No. (2)* [1980] I.C.R. 110, 128.
(2) *Hotel Jayapuri Bhd.* v. *National Union of Hotel, Bar and Restaurant Workers & Anor.* [1980] 1 M.L.J. 109.
(3) *Re Punjab National Bank Ltd.* [1957] S.C.R. 220.
(4) *Baroness Wenlock* v. *River Dee Company* 36 Ch. D. 674.
(5) *Attorney-General & Ephraim Hutchings* v. *The Directors etc. of the Great Eastern Railway Company* (1880) 5 App. Cas. 473.

ORIGINATING MOTION.

C.V. Das for the applicant.

Maurice Gomes for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This is an application by Lee Wah Bank Limited for an Order of Certiorari to quash that part of the decision of the Industrial Court in Award No. 148 of 1979 directing payment of any benefits due under any collective agreements or agreements to a dismissed employee. In the Industrial Court the employee was the applicant in a reference under section 26 of the Industrial Relations Act, 1967. In the reference document (P1) the dispute between Lee Wah Bank Limited and the National Union of Bank Employees was expressly stated to be "the dismissal of one Mr. Chia Kim Swee on November 30, 1977."

The application for certiorari was based on a number of grounds as set out at pages 2 and 3 of the statement but at the commencement of the hearing the applicant proceeded only on grounds (1), (2) and (3) which are reproduced below:—

"(1) The Industrial Court had no jurisdiction and/or exceeded its jurisdiction and/or acted without jurisdiction in awarding relief to a workman whose dismissal had been upheld by it.

(2) The Industrial Court misconstrued its powers under section 30 of the Industrial Relations Act, 1967 in awarding relief to a workman whose dismissal it had held to be for a just cause and excuse.

(3) The Industrial Court erred in law in awarding the said relief to the workman in that the said relief was granted on the erroneous premise that the workman's misconduct resulting in his dismissal was not criminal in nature. Earlier the Industrial Court had held that the said workman contravened section 51 of the Banking Act, 1973 relating to acts of corruption by employees of commercial banks."

The Industrial Court had upheld the dismissal of the employee as being just and proper. The Industrial Court had also found as a fact that the employee was using his wife's account to indulge in transactions of the bank and he had derived substantial benefits from these transactions. After referring to section 51 of the Banking Act, 1973 (which makes it a criminal offence for an employee of a licensed bank to indulge in certain transactions) the Industrial Court had also found that "on this ground alone the bank was entitled to dismiss the employee." As regards the allegation of the Union that natural justice was denied to the employee during the inquiry the Industrial Court had held that the complaints were made known to the employee beforehand and that sufficient opportunity had been given to the employee to exculpate himself. The last paragraph of the award of the Industrial Court reads as follows:—

> "The court now awards that the dismissal of the claimant by the Bank do stand. *However, in view of his long service with the Bank and the fact that the complaints in question are not of a criminal nature, the court directs that any benefits due under the relevant collective agreements or agreement up till date of dismissal shall be paid over to him.*"

The second portion of the paragraph emphasized is the subject of the application for certiorari.

The whole question would seem to centre around what interpretation should be given to the powers of the Industrial Court in making an award under section 30 of the Industrial Relations Act, 1967. More specifically, how wide are the powers of the Industrial Court under section 30(6) of the Act? The question which necessarily follows is whether the impugned part of the award was made outside the powers of section 30(6) of the Act and therefore outside jurisdiction.

On behalf of the respondent it was urged firstly that a study of the history of section 30 of the Act would show that the powers of the Industrial Court in handing down awards under that section should be construed liberally. It was argued that the trend was towards liberalising the powers of the Industrial Court. Thus under the earlier legislation (former section 16A) all dismissals were dealt with under one provision and that the specific reliefs were reinstatements with arrears of wages or compensation. This whole section was however repealed and replaced (by Act A299 of 1975) with the new section 17A which section has since been re-numbered as the present section 20(1) under the present Act. On closer scrutiny I found that the history of the provision does not in any way support this argument. Under section 20(3) of the Act the Minister may refer the representations to the Industrial Court for an award. Under the old section 16A the Minister had also the power to refer the matter to the Industrial Court (section 16A(4)). Also, the earlier section 27(6) has now been converted to section 30(6) with no change in the language of the provision. Thus I am unable

to find any ground to support the proposition that the powers of the Industrial Court under section 30(6) of the Act should be liberally construed. Neither can I find anywhere in the argument an answer to the established principle that a creature of statute has such powers only as are conferred by the statute which creates it.

In dealing with a similar question in *Nelson* v. *B.B.C. No. (2)*[1] Brandon L.J. in the Court of Appeal referred to an established principle at page 128 when he said that an industrial tribunal is not a court of record and since there is no separate or special statutory provision empowering an industrial tribunal to award interest on compensation for unfair dismissal if follows that the tribunal has no such power. Our Industrial Court is the creature of the Industrial Relations Act, 1967. It is not a civil court. It has no inherent jurisdiction.

The interpretation of section 30(6) of the Industrial Relations Act, 1967 also came into question in a similar although not identical case of *Hotel Jaya Puri Bhd.* v. *National Union of Hotel, Bar & Restaurant Workers & Anor.*[2] It arose out of an originating motion to quash an award made against Hotel Jaya Puri to pay compensation of two months' salaries plus fixed allowances in favour of certain workmen employed in the business of the Hotel Restaurant. The Restaurant commenced business on July 30, 1974 but due to financial losses closed down on August 31, 1976. Following the closure of business by the Restaurant, a dispute arose between the Union and the Restaurant on account of the closure and the termination of service of 56 employees. The Union asked for their reinstatement or alternative employment without loss of benefits. The Industrial Court handed down an award that compensation was to be paid. A number of grounds were taken to quash the award. But the point relevant to our present purpose was dealt with in the judgment of Salleh Abas F.J. at pages 112-113 as follows:—

"The next point which I have to consider is the basis how and why the President gave an award of compensation of two months' salary and fixed allowances against the Hotel. I tried to find the basis why compensation is paid at all. If there is a legal basis for paying the compensation, the question of amount of course is very much a matter of the discretion which the Industrial Court is fully empowered under section 30 of the Industrial Relations Act to fix, but where there is no legal basis for the payment of compensation, I do not think that the President can create legal right and obligation for it and, in my view, the award will be clearly an error of law for which I am prepared to allow this application."

The distinction between that case and the present case is this. In that case the Industrial Court made no finding on the question of dismissal (as it appeared that the Union during the course of the proceeding abandoned the point). The Industrial Court in fact held that the closure of the business was perfectly legal and proper and the termination of the service of the workers could never be dismissal. Salleh Abas F.J. held that the compensation ordered by the award could not be on the basis of dismissal. Thus he said at page 114:

"Even assuming that the court was right in holding that the termination of service is discharge, what is the legal basis for the compensation so awarded? There is nothing in the legislation nor in the Collective Agreements. I do not consider that sections 28, 29 and 30 of the Industrial Relations Act are wide enough to authorise the court to create legal rights and duties between the parties to the dispute or the party added subsequently."

In *Punjab National Bank Ltd.*[3] the question for decision was whether the provision of section 11(7) of the Industrial Disputes Act, 1947 provided power for the Industrial Tribunal to award costs in advance in a proceeding which was pending. That provision of the Indian Act conferred on the Industrial Tribunal a discretion on matters of costs and especially gave full power to the Tribunal to determine to whom and to what extent and subject to what conditions, if any, such costs were to be paid. Despite the broad language of the provisions the Supreme Court struck down the award and held there was no power for the Tribunal to direct the payment of costs to the party in advance.

How wide then are the powers of the Industrial Court under section 30(6)? According to section 30(6) of the Act the Industrial Court in making an award should not be bound to restrict itself to the specific relief asked for nor to the demands of the parties. The Industrial Court in making the award may include in the award any matter which it thinks necessary or expedient for the purpose of settling the dispute or the reference. That is the gist in clause (6) of section 30 of the Act. In my view the apparent broadness of the language used here does not go beyond what is already conferred on any person (or body) by section 40(1) of the Interpretation Act, 1967. Section 40(1) reads as follows:—

"40(1) Where a written law confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing."

These are powers which are necessarily implied and nothing more. Since the Industrial Court is a creature of the Industrial Relations Act, 1967 its powers must be discovered only from the four corners of the Act — expressly or by necessary implication — see also *Baroness Wenlock* v. *River Dee Company*[4] and *The Attorney-General & Ephraim Hutchings* v. *The Directors, etc., of The Great Eastern Railway Company.*[5]

It was also urged on behalf of the respondent in this case that the impugned part of the award was at the worst, vague because it speaks of "any collective agreement" whereas there is no such agreement or arrangement involved with the employee in question. Therefore it was urged that if the applicant was unhappy about the impugned part of the award what should be done was to apply under section 33 of the Industrial Relations Act, 1967 to have the award referred back to the Industrial Court for interpretation. In my opinion section 33 of the Act presumes that the award in question is an award made within jurisdiction and if however the award itself is challenged as being in excess of jurisdiction it would be a futile exercise to have the award referred back to the Industrial Court for interpretation.

Based on the foregoing it is my opinion that looking at the language of section 30(6) of the Industrial Relations Act, 1967 the impugned part of the award referred to in the application was indeed made in excess of jurisdiction. The application in the motion is accordingly granted with costs.

Application granted.

Solicitors: *Shook Lin & Bok; Maurice Gomes & Co.*